



Utah Supreme Court
Advisory Committee on the Utah Rules of Civil Procedure
Meeting Agenda
Lauren DiFrancesco, Chair

Location: WebEx Meeting: [Link](#)

Date: April 24, 2024

Time: 4:00 – 6:00 p.m.

Welcome and approval of minutes	Tab 1	Lauren DiFrancesco
Update on New URCP Rule		Lauren DiFrancesco
Rule 5 - Service (<i>Continued discussion</i>)	Tab 2	Loni Page
Rule 3(a)(2) - Filing of complaint after service (<i>Continued discussion</i>)	Tab 3	Trevor Lee
Rule 4 - Conformity with UC §78B-8-302(7) for Process Servers (<i>Discussion</i>)	Tab 4	Lauren DiFrancesco
Rules 1 and 81 - Amend to exclude the Business and Chancery Court from URCP (<i>Discussion</i>)	Tab 5	Stacy Haacke
Rule 63A - HJR008 - Joint Resolution Amending Rules of Civil Procedure on Change of Judge as a Matter of Right (<i>Information</i>)	Tab 6	Lauren DiFrancesco

Reminder: Check style guide for conformity before rules are sent to the Supreme Court.

Upcoming Items:

- Standard POs Subcommittee – *Additional members?*
- Rule 47 Attorney Voir Dire
- Third Party Financing
- Rule 76 Subcommittee
- Rule 62 Subcommittee
- Removal of gendered pronouns by Plain Language Subcommittee
- Rule 7A and 37 Motion for Sanctions Subcommittee
- Rule 101 Subcommittee

- Rule 60 Subcommittee
- Affidavit and Declarations Subcommittee
- Rule 5(a)(2) and (b)(3) Subcommittee
- Rule 74 Subcommittee

URCP Committee Website: [Link](#)

Meeting Schedule:

May 22

June 26

July 17

August 28

September 25

October 23

November 20

December 18

Tab 1

**UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE**

**Summary Minutes – March 27, 2024
via Webex**

THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX

Committee members	Present	Excused	Guests/Staff Present
Rod N. Andreason, Vice-Chair	X		Stacy Haacke, Staff
Lauren DiFrancesco, Chair	X		Keri Sargent
Trevor Lee		X	Crystal Powell, Recording Secretary
Ash McMurray	X		
Michael Stahler	X		
Timothy Pack	X		
Loni Page	X		
Bryan Pattison		X	
Judge Clay Stucki	X		
Judge Andrew H. Stone	X		
Justin T. Toth	X		
Susan Vogel	X		
Tonya Wright	X		
Judge Rita Cornish	X		
Commissioner Catherine Conklin	X		
Giovanna Speiss		X	
Jonas Anderson		X	
Heather Lester		X	
Jensie Anderson	X		
Judge Blaine Rawson		X	
Judge Ronald Russell	X		
Rachel Sykes	X		
Judge Laura Scott, <i>Emeritus</i>	X		
James Hunnicutt, <i>Emeritus</i>		X	

(1) INTRODUCTIONS

The meeting began at 4:05 p.m. after forming a quorum. Ms. Lauren DiFrancesco welcomed the Committee members.

(2) APPROVAL OF MINUTES

Ms. Di Francesco asked for approval of the February 2024 Minutes subject to amendments noted by the Minutes subcommittee. Judge Clay Stucki moved to adopt the Minutes as amended. Judge Andrew Stone seconded. The Minutes were unanimously approved.

(3) UPDATE ON NEW REMOTE HEARINGS RULE

Ms. DiFrancesco gave a brief update on the new Rule on remote hearings. She thanked everyone for their input and noted that the draft rule is moving forward with a smaller group of the supreme court. She passed along the gratitude of the supreme court for the work that the Committee did outside of regular meetings on the Rule.

(4) RULES 74. NOTICE OF WITHDRAW

Mr. Michael Stahler presented on the work of the subcommittee on counsel/co-counsel withdrawals from cases under Rule 74. He recounted that the subcommittee's instructions were focused on two things. First, whether the existing rule contains enough contact information for a client if an attorney withdraws. Second, the withdrawal of an attorney when the party continues to be represented by counsel. The amendments were focused under subsection (a) and the addition of a new subsection (e). Mr. Stahler also summarized some of the concerns and questions that the Committee had discussed previously. Commissioner Conklin questioned whether a substitution of counsel would already provide a satisfactory solution to the issues. Mr. Stahler explained that the situation comes up a lot in firms and at the Attorney General's Office where an associate or younger attorney leaves but there is no one to substitute in their place making the substitution of counsel not as clean as a notice to withdraw. Mr. Stahler explained the amendments to the Committee, noting that the Committee took guidance from the local federal rules.

Ms. Lauren DiFrancesco raised that there is a significant difference between the state rule and the local federal rule where the state rule is a bit ambiguous on who is required to send out the notice to appear or appoint. She suggested that there be amendments to 74 (c) with a responsibility on the withdrawing counsel to serve the notice

to appoint or appear rather than opposing party. She also raised that the use of the word “proceeding” is unclear along with when the stay of proceedings is effective. Mr. Stahler suggested that the Rule undergo additional drafting from the subcommittee before a vote and welcomed all the concerns of the Committee with the goal of incorporating them. Judge Stone noted that he believes the opposing party should have the responsibility to serve the notice to appear as many withdrawing attorneys are withdrawing due to lack of contact from the client or prolonged nonpayment of legal fees. He also added that the notice to appear or appoint is an adversarial process that is most appropriately handled by the opposing party, and it would be wrong to put the withdrawal attorney under that responsibility. Ms. DiFrancesco noted that perhaps there needs to be clarification on whether service must be done under Rule 4 or 5 and that the Rule does not specify that the information provided can or can’t be used to effectuate service. Judge Stone noted that service would be under Rule 5. Ms. DiFrancesco noted that Rule 5(b) may limit the use of certain contact information in effectuating service under the Rule which should be clarified.

Ms. Vogel questioned whether a form noting that only the remaining attorneys will be proceeding with the case would suffice. The Committee generally discussed the various scenarios under which counsel or law firms withdraw as well as the malpractice and insurance implications of properly withdrawing. Mr. Jim Hunnicut noted he sees where the 21-day deadline is easily abused where some arguments have been made that no proceedings mean no hearings and not no action within the 21-days. Ms. Tonya Wright also shared her knowledge of situations in which the 21-day stay may be abused. Ms. Vogel also shared her experience with the self-help center and noted that there should be clarification that the stay refers to all deadlines and not just hearings. Mr. Andreason questioned whether there needed to also be a penalty in the Rule. Mr. Hunnicut raised the issue of when lawyers represent themselves and have a co-counsel. Ms. DiFrancesco noted that that issue might go beyond just this Rule.

Mr. Rod Andreason noted that under 74(a) he is concerned that the other party may contest the notice not being done properly if the attorney doesn’t provide all known contact information. He wanted to make sure that the Rule does not set a standard of compliance that is too difficult to meet. The Committee discussed the language on “all contact information.” The Committee discussed the implications of not appearing after 21 days and whether the party would then be in default under Rule 5 and whether other motions would need to be filed on the party or if the other party could file a motion to dismiss the case under Rule 74(c) for failure to appear to or appoint. Judge Stone clarified that the Rule is not meant to be a default to the party or present a dispositive avenue in the case. Commissioner Conklin reminded the Committee of the case law under *Young v. Hagel* that says you can’t be defaulted for not “appearing” in response to a Rule 74 notice. Mr. Andreason questioned whether the Rule is then a misnomer and should say instead notice to appoint or proceed pro se. The subcommittee will continue working on the Rule to address the many concerns raised during the discussion.

(5) RULE 5. SERVICE

Ms. Loni Page summarized the stylistic changes made to the Rule to confirm with the Style Guide. She noted that substantive changes as follows:

1. Rule 5(a)(1) became easier by highlighting the exception rather than listing the documents to be served. The one exception was ex parte motions under Rule 7.
2. She noted that 5(a)(2) dealing with serving parties in default is being worked on by a different subcommittee and this subcommittee is not suggesting any changes to 5(a)(2) at this time. Ms. DiFrancesco noted that the other subcommittee is looking at the bigger picture of whether or when it is appropriate to stop serving a party and the work of the other subcommittee is not meant to preclude this subcommittee from making changes to the default language. The other subcommittee is being led by Ms. Vogel and includes Ms. Conklin, Judge Cornish, Judge Scott, and Mr. Justin Thoth. Ms. Vogel requested Mr. Stahler join, and he agreed.
3. Under 5(b)(1) (Whom to serve), some substantive changes were previously approved, so the Subcommittee only made stylistic changes.
4. Under 5(b)(3)(A) (Methods of Service), Ms. Page noted that they kept a lot of the substance that had been discussed and sent out for comments before as well as in view of MyCase being programmed to Rule 5. The changes added subparagraphs to cover scenarios where an attorney is licensed outside of Utah and does not have an electronic filing account. Ms. DiFrancesco questioned whether the scenario is attorneys licensed outside of Utah or licensed not in Utah, but if the outcome is the same the difference may not matter. Ms. DiFrancesco asked whether MyCase notifies all parties if a pro se party registers with MyCase. Ms. Page relayed that that is something the MyCase is being programmed for. Ms. DiFrancesco questioned whether 5 (b)(3)(B)(ii) was necessary. Ms. Page explained there was some concern raised on the proper email a self-represented party could use to serve counsel of opposing party. Ms. Keri Sargent also noted that usually Coris is updated when an attorney updates their email address with the State Bar, but e-filing is not updated, and a party would need to get the email from the individual's header on their filings. The Committee generally discussed how parties are notified of updates in a case in e-filing as well emailing in documents. Ms. McMurray suggested that all instances of the usage of "and/or" should be changed to just "or."

5. Under 5(b)(3)(C) (Mail and other methods), changes were made to include that if the party does not have an electronic filing account, then service would be to the most recent address the person being served has provided. Commissioner Conklin questioned whether there should be a requirement to provide proof of what address is being used for service. Ms. Vogel noted that the certificate of service has that spot to indicate so it is always done by self-represented persons, but many attorneys do not provide that proof.
6. Under 5(b)(5) (Who serves), Ms. Page explained that this new paragraph is meant to fix the concerns raised on who must serve what. The change clarifies that orders signed by the court but not prepared by the court are to be served by the party who prepared it. Rule 7 makes it clear that proposed orders are to be served by the filing party but not signed orders. Ms. DiFrancesco noted that this change is an important change but wonders if a party would still be on notice that they are responsible for service on documents they initially prepared and suggested including that wording “documents initially prepared...” The Committee discussed whether members correctly interpret the intent of the Rule from the language. Mr. Stahler noted that he also thinks the general Bar will be surprised by the Rule change. The Committee discussed the effect MyCase will have on notifications and service to parties and suggested that with MyCase not being in effect perhaps the Rule needs to be amended in the future to accommodate that functionality. Mr. Hunnicut suggested borrowing from the language of Rule 58 notice of judgment.
7. Under 5(d) (Certificate of service), Ms. Page indicated that right now only the court is exempt from filing a certificate of service when serving under (b)(3)(A) electronic filing. These proposed changes would not require a certificate of service from anyone with an electronic filing unless service was done by email, mail or other methods; that is—no certificate of service is required when a document is served through electronic filing but when the document is required to be served by email, mail, or other methods then a certificate of service showing the date and method of service including the email or mailing address used would be required.

Ms. DiFrancesco noted that the Committee would discuss 5(e) at another time due to time constraints. Mr. Stahler moved to approve the changes discussed. Judge Stone seconded. The amendments were unanimously approved.

(8) ADJOURNMENT

The meeting was adjourned at 6: 00 p.m. The next meeting will be April 24, 2024, at 4:00 p.m.

Tab 2

Summary of Proposed Changes to Rule 5

Various stylistic changes to conform with Utah Supreme Court's Style Guide for Editing Rules

- *Document(s)* instead of *paper(s)*
- *Court clerk* or *the clerk* instead of *clerk of the court*
- *As provided in Rule* instead of *under Rule*, when practicable
- Removed paragraphs in citations

(a)(1) Documents that must be served

Proposed changes approved by committee during its March 2024 meeting.

Simplifies what must be served by stating that every document filed with the court after the original complaint must be served with the exception of ex parte motions as permitted under [Rule 7](#).

(a)(2) Serving parties in default

Being worked on by a different subcommittee.

The Rule 5 subcommittee proposes to clarify what it means to “appear” by adding “file and serve a responsive pleading or otherwise appear” to (a)(2)(B).

(b)(1) Whom to serve

Proposed changes approved by committee during its September 2023 meeting. Added clarity for self-represented parties.

(b)(3)(A) Methods of service

Proposed changes approved by committee during its March 2024 meeting.

MyCase is being programmed to Rule 5. These proposed changes will only make service requirements more clear for all parties. Communication regarding MyCase being considered an electronic filing account for purposes of Rule 5 service will be managed by the AOC.

(b)(5) Who serves

April 2024 Agenda

The proposed changes seek to clarify that orders signed by the court but not prepared by the court are to be served by the party who prepared it. Based on the following discussion points, the Rule 5 Subcommittee has concluded that it usually benefits the preparer for other parties to be served with the signed order therefore, the burden to serve should follow the original document preparer.

- “Prepared by” can be interpreted as the filer or the court, once signed or modified. “Submitted by” is another option for wording.

- It is not clear to a judicial assistant when/if the court modifies the proposed order.
- Previous guidance received by the court's office of general counsel said the "genesis" of a document needs to be considered.
- With very few exceptions, every document filed must be served which would include signed orders. Filer could be interpreted as the party who prepared the document or the court who signed. We maintain that the filer is the preparer/submitting party. The document heading indicates this as well.
- Many attorneys only serve the proposed order and not the signed order as a general practice. The committee feels that the language in the rule should be very strong in order to draw an attorney's attention to this clarification.
- Many courts are not serving them either as they did not "prepare" the order and do not have the staff to serve everything signed by the judge.
- Who are we missing when the signed order is not served?
 - Self-represented parties who do not have an electronic filing account (MyCase).
- The proposed language is similar to language found in URCP 58(A)(g) in that *every party preparing a judgment [or order] must promptly serve a copy of the signed judgment [or order] on the other parties.*

(d) Certificate of service

April 2024 Agenda

Right now, only the court is exempt from filing a certificate of service when serving under (b)(3)(A) *electronic filing*. These proposed changes would not require a certificate of service by anyone with an electronic filing account unless service was made by email, mail or other methods.

The committee wants to be sure the service address is included in the certificate of service. We need to carve out exceptions for safeguarded information found in CJA 4-202.02(8).

(e) Filing

April 2024 Agenda

Proposed changes mirror those found in CJA Rules 4-503/603/801/901 and 9-302 *Mandatory filing and exceptions* that state that self-represented parties who are not attorneys may file via email, mail, MyCase or in person.

1 **Rule 5. Service and filing of pleadings and other ~~papers~~ documents.**

2 **(a) When service is required.**

3 **(1) ~~Papers~~ Documents that must be served. Unless permitted by statute, rule, or**
4 **~~court order, Except as otherwise provided in these rules or as otherwise directed by~~**
5 **~~the court, the following papers~~ every document filed with the court after the**
6 **~~original complaint~~ must be served by the party filing it on every party to the case. ~~Ex~~**
7 **~~parte motions may be filed without serving if permitted under Rule 7.~~**

8 ~~(A) a judgment;~~

9 ~~(B) an order that states it must be served;~~

10 ~~(C) a pleading after the original complaint;~~

11 ~~(D) a paper relating to disclosure or discovery;~~

12 ~~(E) a paper filed with the court other than a that may be heard ex parte; and~~

13 ~~(F) a written notice, appearance, demand, offer of judgment, or similar paper.~~

14 **(2) Serving parties in default.** No service is required on a party who is in default
15 except that:

16 (A) a party in default must be served as ordered by the court;

17 (B) a party in default for any reason other than for failure to file and serve a
18 responsive pleading or otherwise appear must be served as provided in
19 paragraph (a)(1);

20 (C) a party in default for any reason must be served with notice of any hearing to
21 determine the amount of damages to be entered against the defaulting party;

22 (D) a party in default for any reason must be served with notice of entry of
23 judgment ~~under as provided in Rule 58A(g);~~ and

24 (E) a party in default for any reason must be served ~~under as provided in~~ Rule 4
25 with pleadings asserting new or additional claims for relief against the party.

Comment [LP1]: Supreme Court Style Guide recommendation

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Comment [LP2]: We changed the list from what must be served to only those that are an exception as stated in other rules or as directed by the court.

Comment [LP3]: Alternative option: Ex parte motions may be filed without being served as provided in Rule 7.

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Comment [LP4]: Summons must now include the bilingual notice (Rule 4 c1g) which is the court's form. Attorneys are supposed to attach the notice to their summons templates.

Comment [LP5]: 3-2023 Committee Mtg: hesitant to narrowly define what it means to appear so we added language instead of replacing "appear."

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Comment [LP6]: Style Guide: only cite statute or rule if provides clarity and consistency. When citing, do not cite specific paragraph.

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26 | **(3) Service in actions begun by seizing property.** If an action is begun by seizing
27 | property and no person is or need be named as defendant, any service required
28 | before the filing of an answer, claim or appearance must be made upon the person
29 | who had custody or possession of the property when it was seized.

30 | **(b) How service is made.**

31 | **(1) Whom to serve.** If a party is self-represented, service must be made upon the
32 | self-represented party. If a party is represented by an attorney, a ~~paper~~-document
33 | served under this rule must be served upon the attorney unless the court orders
34 | service upon the party. Service must be made upon the attorney and the party if:

35 | (A) an attorney has filed a Notice of Limited Appearance ~~under as provided in~~
36 | Rule 75 and the ~~papers~~-documents being served relate to a matter within the
37 | scope of the Notice; or

38 | (B) a final judgment has been entered in the action and more than 90 days has
39 | elapsed from the date a ~~paper~~-document was last served on the attorney.

40 | **(2) When to serve.** If a hearing is scheduled 7 days or less from the date of service, a
41 | party must serve a ~~paper~~-document related to the hearing by the method most likely
42 | to be promptly received. Otherwise, a ~~paper~~-document that is filed with the court
43 | must be served before or on the same day that it is filed.

44 | **(3) Methods of service.** A ~~paper~~-document is served under this rule by:

45 | (A) **Electronic filing.** ~~except~~-Except in the juvenile court, a ~~paper~~-document is
46 | served by submitting it for electronic filing, or the court submitting it to the
47 | electronic filing service provider, if the person being served has an electronic
48 | filing account;

49 | (B) **Email.** If the party serving or being served a document does not have an
50 | electronic filing account, emailing it to:

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51 (i) the most recent email address the person being served has provided ~~by~~
 52 ~~the person~~ to the court ~~and other parties under as provided in Rule~~
 53 ~~10(a)(3)~~ or Rule 76; or

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54 (ii) ~~to if service is to an attorney licensed in Utah, to~~ the email address on
 55 ~~the attorney's pleadings and/or on~~ file with the Utah State Bar; or

56 (iii) if service is to an attorney not licensed in~~outside of~~ Utah, to the email
 57 address on the attorney's pleadings and/or on file with the attorney
 58 licensing entity in the state where the attorney is licensed~~in.~~

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59 (C) Mail and other methods. If the party serving or being served with a
 60 paper document does not have an electronic filing account or email, a paper
 61 document may be served under this paragraph by:

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62 (i) mailing it to the most recent address the person being served has provided
 63 to the court ~~under as provided in Rule 10 or Rule 76, or, if none,~~ the person's
 64 last known address;

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65 ~~(D)~~(ii) handing it to the person;

66 ~~(E)~~(iii) leaving it at the person's office with a person in charge or, if no one is
 67 in charge, leaving it in a receptacle intended for receiving deliveries or in a
 68 conspicuous place;

69 ~~(F)~~(iv) leaving it at the person's dwelling house or usual place of abode with a
 70 person of suitable age and discretion who resides there; or

71 ~~(G)~~(v) any other method agreed to in writing by the parties.

72 **(4) When service is effective.** Service by mail or electronic means is complete upon
 73 sending.

74 **(5) Who serves.** Unless otherwise directed by the court or these rules:

75 (A) every ~~paper document~~ required to be served must be served by the party
 76 preparing it, including subsequently signed orders and judgments; and

77 (B) every ~~paper~~ document initially prepared by the court will be served by the
78 court; ~~and~~.

79 (C) every document signed by the court that was initially prepared and
80 submitted by a self-represented party or attorney ~~but not prepared by the~~
81 ~~court~~ must will be served by the party who prepared it. *Rule 58A(g)* every
82 party preparing a judgment or order must promptly serve a copy of the signed
83 judgment or order on the other parties ~~and file proof of service with the court.~~

84 (c) **Serving numerous defendants.** If an action involves an unusually large number of
85 defendants, the court, upon motion or its own initiative, may order that:

86 (1) a defendant's pleadings and replies to them do not need to be served on the other
87 defendants;

88 (2) any cross-claim, counterclaim avoidance or affirmative defense in a defendant's
89 pleadings and replies to them are deemed denied or avoided by all other parties;

90 (3) filing a defendant's pleadings and serving them on the plaintiff constitutes notice
91 of them to all other parties; and

92 (4) a copy of the order must be served ~~up~~ upon the parties.

93 (d) **Certificate of service.** No certificate of service is required when a ~~paper~~ document is
94 served by filing it with ~~through the~~ court's electronic filing system ~~account under~~
95 paragraph (b)(3)(A). When a ~~paper~~ document that is required to be served is served by
96 email, mail, or other ~~means~~ methods of service:

97 (1) if the ~~paper~~ document is filed with the court, a certificate of service showing the
98 date and ~~manner~~ method of service, including the email or mailing address used,
99 unless safeguarded, must be filed with it or within a reasonable time after service;
100 and

101 (2) if the ~~paper~~ document is not filed with the court, a certificate of service need not
102 be filed unless filing is required by rule or court order. ~~A paper required by this rule~~

103 ~~to be served, including electronically filed papers, must include a signed certificate~~
 104 ~~of service showing the name of the document served, the date and manner of~~
 105 ~~service and on whom it was served. Except in the juvenile court, this paragraph~~
 106 ~~does not apply to papers required to be served under paragraph (b)(5)(B) when~~
 107 ~~service to all parties is made under paragraph (b)(3)(A).~~

108 (e) Filing. Except as provided in Rule ~~7(f)~~ and Rule ~~26(f)~~, all ~~papers~~ documents after the
 109 complaint that are required to be served must be filed with the court. ~~Parties~~ Attorneys
 110 with an electronic filing account must file a ~~paper~~ document electronically. A self-
 111 represented party ~~who is not an attorney without an electronic filing account~~ may file a
 112 ~~paper~~ document ~~by delivering it to~~ with the court clerk of the court ~~or to a judge of the~~
 113 ~~court~~ using any of the following methods:

- 114 (1) email;
- 115 (2) mail;
- 116 (3) the court’s MyCase interface, where applicable; or
- 117 (4) in person.

118 Filing is complete upon the earliest of acceptance by the electronic filing system or by
 119 the court ~~clerk of court or the judge.~~

120 (f) Filing an affidavit or declaration. If a person files an affidavit or declaration, the
 121 filer may:

- 122 (1) electronically file the original affidavit with a notary acknowledgment as
 123 provided by Utah Code Section ~~46-1-16(7)~~;
- 124 (2) electronically file a scanned image of the affidavit or declaration;
- 125 (3) electronically file the affidavit or declaration with a conformed signature; or
- 126 (4) if the filer does not have an electronic filing account, present the original affidavit
 127 or declaration to the court clerk ~~of the court~~, and the clerk will electronically file a
 128 scanned image and return the original to the filer.

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Comment [LP7]: Track changes with Aff/Dec sub-committee

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129 | The filer must keep an original affidavit or declaration of anyone other than the filer
130 | safe and available for inspection upon request until the action is concluded, including
131 | any appeal or until the time in which to appeal has expired.

132 | *Effective May/November 2024*

133 | **Advisory Committee Notes**

134 | *Note adopted ~~2015~~20---*

135 | Under paragraph (b)(3)(A), electronically filing a document has the effect of serving the
136 | document on ~~lawyers~~parties who have an e-filing account. (~~Lawyers~~Attorneys
137 | representing parties in the district court are required to have an account and
138 | electronically file documents. Code of Judicial Administration Rule 4-503.) The 2015
139 | amendment excepts from this provision documents electronically filed in juvenile court.

140 | Although electronic filing in the juvenile court presents to the parties the documents
141 | that have been filed, the juvenile court e-filing application (CARE), unlike that in the
142 | district court, does not deliver an email alerting the party to that fact. The Board of
143 | Juvenile Court Judges and the Advisory Committee on the Rules of Juvenile Procedure
144 | believe this difference renders electronic filing alone insufficient notice of a document
145 | having been filed. So in the juvenile court, a party electronically filing a document must
146 | serve that document by one of the other permitted methods.

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Tab 3

Rule 3(a)(2)

Rule 3(a)(2) Summary

- Federal Rules: Case is commenced by filing a complaint
- Utah Rule 3: Case is commenced by: (1) filing a complaint or (2) serving a summons and copy of the complaint, and then filing within 10 days
- Rule 3(a)(2) is used primarily in debt collection cases because:
 - Debt collectors want to try to settle relatively low-dollar disputes without paying a filing fee.
 - Debtors are sometimes difficult to serve, especially after they have been contacted once, so collectors want to serve them once, give them an opportunity to settle, and then file and pay the filing fee if debtors won't pay/settle.
- Problems
 - Debtors are confused when they receive a complaint; don't know if it has been filed or whether they need to answer; burden is on Defendant to figure out if they have been sued.
 - Debtors constantly call the court to see if a case has been filed; this is a burden on clerks.
 - Even if a case was filed within the 10-day window, it often doesn't show up in the system until day 13.
 - Court ends up fielding a bunch of phone calls.
 - Also, if an answer is filed early, there is no complaint to associate it with, so the clerks end up with a basket of orphan answers they have to keep track of.

Proposed Solution

- Changes:
 - Remove Rule 3(a)(2).
 - Case is commenced only by filing a complaint with the Court.
 - Increase time for service to 150 days (edit to Rule 4).
 - Update case management system so debt collection cases do not incur filing fee until default or judgment.
- Benefits:
 - Removes confusion by primarily pro se debtors surrounding whether a case has been filed.
 - Reduces burden on clerks fielding telephone calls from debtors asking whether case has been filed.
 - Addresses Debt Collection bar's request to be able to negotiate these issues without first paying filing fee.
 - Addresses Debt Collection bar's concern about difficulty in finding and serving debtors, and requires service only once.
- Potential issues:
 - Affects deadline to serve for all types of lawsuits because Rule 4 is amended.
 - May result in more cases being filed.
 - More reported lawsuits against debtors; likely does not affect credit, but could appear on a background check (note: these last two issues only affect debtors who would otherwise have settled between being served with a 10-day summons and a lawsuit being filed; anecdotal evidence is this is a small number).

Rule 3. Commencement of action.

(a) How commenced. A civil action is commenced ~~(1)~~ by filing a complaint with the court, ~~or (2) by service of a summons together with a copy of the complaint in accordance with Rule 4. If the action is commenced by the service of a summons and a copy of the complaint, then the complaint, the summons and proof of service, must be filed within ten days of such service. If, in a case commenced under paragraph (a)(2) of this rule, the complaint, summons and proof of service are not filed within ten days of service, the action commenced shall be deemed dismissed and the court shall have no further jurisdiction thereof.~~ If a check or other form of payment tendered as a filing fee is dishonored, the party shall pay the fee by cash or cashier's check within 10 days after notification by the court. Dishonor of a check or other form of payment does not affect the validity of the filing, but may be grounds for such sanctions as the court deems appropriate, which may include dismissal of the action and the award of costs and attorney fees.

(b) Time of jurisdiction. The court shall have jurisdiction from the time of filing of the complaint or service of the summons and a copy of the complaint.

Advisory Committee Notes

Rule 3 constitutes a significant change from the prior rule. The rule retains service of the ten-day summons as one of two means to commence an action, but the rule requires that the summons together with a copy of the complaint be served on the defendant pursuant to Rule 4. In so doing, the rule eliminates the requirement that a copy of the complaint be deposited with the clerk for the defendant whose address is unknown. The changes in Rule 3 must be read and should be interpreted in conjunction with coordinate changes in Rule 4 and with a change in Rule 12(a) that begins the running of the defendant's 20-day response time from the service of the summons and complaint.

Paragraph (a). This paragraph eliminates the requirement that a copy of the complaint be deposited with the clerk for the defendant whose address is unknown. Paragraph (b) of the former rule, which permitted the plaintiff to deposit copies of the complaint with the clerk for defendants not otherwise served with a copy at the time of the service of the summons, has also been eliminated. The rule requires, in effect, that both the summons and the complaint be served pursuant to Rule 4. Under a coordinate change in Rule 12(a), the defendant's time for answering or otherwise responding to the complaint does not begin to run until service of the summons and complaint pursuant to Rule 4.

Paragraph (b). This paragraph is substantially identical to paragraph (c) of the former rule.

Rule 4. Process.

Effective: 11/1/2023

(a) Signing of summons. The summons must be signed and issued by the plaintiff or the plaintiff's attorney. Separate summonses may be signed and issued.

(b) Time of service. Unless the summons and complaint are accepted, a copy of the summons and complaint in an action commenced under Rule [3\(a\)\(1\)](#) must be served no later than ~~1520~~ days after the complaint is filed, unless the court orders a different period under Rule 6. If the summons and complaint are not timely served, the action against the unserved defendant may be dismissed without prejudice on motion of any party or on the court's own initiative.

(c) Contents of summons.

(1) The summons must:

(A) contain the name and address of the court, the names of the parties to the action, and the county in which it is brought;

(B) be directed to the defendant;

(C) state the name, address and telephone number of the plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number;

(D) state the time within which the defendant is required to answer the complaint in writing;

(E) notify the defendant that in case of failure to answer in writing, judgment by default may be entered against the defendant;

(F) state either that the complaint is on file with the court or that the complaint will be filed with the court within 10 days after service; and

(G) include the bilingual notice set forth in the form summons approved by the Utah Judicial Council.

(2) If the action is commenced under Rule [3\(a\)\(2\)](#), the summons must also:

(A) state that the defendant need not answer if the complaint is not filed within 10 days after service; and

(B) state the telephone number of the clerk of the court where the defendant may call at least 14 days after service to determine if the complaint has been filed.

(3) If service is by publication, the summons must also briefly state the subject matter and the sum of money or other relief demanded, and that the complaint is on file with the court.

(d) Methods of service. The summons and complaint may be served in any state or judicial district of the United States. Unless service is accepted, service of the summons and complaint must be by one of the following methods:

(1) Personal service. The summons and complaint may be served by any person 18 years of age or older at the time of service and not a party to the action or a party's attorney. If the person to be served refuses to accept a copy of the summons and complaint, service is sufficient if the person serving them states the name of the process and offers to deliver them. Personal service must be made as follows:

(A) Upon any individual other than one covered by paragraphs (d)(1)(B), (d)(1)(C) or (d)(1)(D), by delivering a copy of the summons and complaint to the individual personally, or by leaving them at the individual's dwelling house or usual place of abode with a person of suitable age and discretion who resides there, or by delivering them to an agent authorized by appointment or by law to receive process;

(B) Upon a minor under 14 years old by delivering a copy of the summons and complaint to a parent or guardian of the minor or, if none can be found within the state, then to any person having the care and control of the minor, or with whom the minor resides, or by whom the minor is employed;

(C) Upon an individual judicially declared to be incapacitated, of unsound mind, or incapable of conducting the individual's own affairs, by delivering a copy of the summons and complaint to the individual and to the guardian or conservator of the individual if one has been appointed; the individual's legal representative if one has been appointed, and, in the absence of a guardian, conservator, or legal representative, to the person, if any, who has care, custody, or control of the individual;

(D) Upon an individual incarcerated or committed at a facility operated by the state or any of its political subdivisions, by delivering a copy of the summons and complaint to the individual personally, to the person who has the care, custody, or control of the individual, or to that person's designee or to the guardian or conservator of the individual if one has been appointed. The person to whom the summons and complaint are delivered must promptly deliver them to the individual;

(E) Upon a corporation not otherwise provided for in this rule, a limited liability company, a partnership, or an unincorporated association subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or other agent authorized by appointment or law to receive process and by also mailing a copy of the summons and complaint to the defendant, if the agent is one authorized by statute to receive process and the statute so requires. If no officer or agent can be found within the state, and the defendant has, or advertises or holds itself out as having, a place of business within the state or elsewhere, or does business within this state or elsewhere, then upon the person in charge of the place of business;

(F) Upon an incorporated city or town, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the recorder;

(G) Upon a county, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the county clerk;

(H) Upon a school district or board of education, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the superintendent or administrator of the board;

(I) Upon an irrigation or drainage district, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the president or secretary of its board;

(J) Upon the state of Utah or its department or agency by delivering a copy of the summons and complaint to the attorney general and any other person or agency required by statute to be served; and

(K) Upon a public board, commission or body by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to any member of its governing board, or to its executive employee or secretary.

(2) Service by mail or commercial courier service.

(A) The summons and complaint may be served upon an individual other than one covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any state or judicial district of the United States provided the defendant signs a document indicating receipt.

(B) The summons and complaint may be served upon an entity covered by paragraphs (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in any state or judicial district of the United States provided defendant's agent authorized by appointment or by law to receive service of process signs a document indicating receipt.

(C) Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this rule.

(3) Acceptance of service.

(A) Duty to avoid expenses. All parties have a duty to avoid unnecessary expenses of serving the summons and complaint.

(B) Acceptance of service by party. Unless the person to be served is a minor under 14 years old or an individual judicially declared to be incapacitated, of unsound mind, or incapable of conducting the individual's own affairs, a party may accept service of a summons and complaint by signing a document that acknowledges receipt of the summons and complaint.

(i) Content of proof of electronic acceptance. If acceptance is obtained electronically, the proof of acceptance must demonstrate on its face that the electronic signature is attributable to the party accepting service and was voluntarily executed by the party. The proof of acceptance must demonstrate that the party received readable copies of the summons and complaint prior to signing the acceptance of service.

(ii) Duty to avoid deception. A request to accept service must not be deceptive, including stating or implying that the request to accept service originates with a public servant, peace officer, court, or official government agency. A violation of this paragraph may nullify the acceptance of service and could subject the person to criminal penalties under applicable Utah law.

(C) Acceptance of service by attorney for party. An attorney may accept service of a summons and complaint on behalf of the attorney's client by signing a document that acknowledges receipt of the summons and complaint.

(D) Effect of acceptance, proof of acceptance. A person who accepts service of the summons and complaint retains all defenses and objections, except for adequacy of service. Service is effective on the date of the acceptance. Filing the acceptance of service with the court constitutes proof of service under Rule 4(e).

(4) Service in a foreign country. Service in a foreign country must be made as follows:

(A) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(B) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(ii) as directed by the foreign authority in response to a letter of request issued by the court; or

(iii) unless prohibited by the law of the foreign country, by delivering a copy of the summons and complaint to the individual personally or by any form of mail requiring a signed receipt, addressed and dispatched by the clerk of the court to the party to be served; or

(C) by other means not prohibited by international agreement as may be directed by the court.

(5) Other service.

(A) If the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, if service upon all of the individual parties is impracticable under the circumstances, or if there is good cause to believe that the person to be served is avoiding service, the party seeking service may file a motion to allow service by some other means. An affidavit or declaration supporting the motion must set forth the efforts made to identify, locate, and serve the party, or the circumstances that make it impracticable to serve all of the individual parties.

(B) If the motion is granted, the court will order service of the complaint and summons by means reasonably calculated, under all the circumstances, to apprise the named parties of the action. The court's order must specify the content of the process to be served and the event upon which service is complete. Unless service is by publication, a copy of the court's order must be served with the process specified by the court.

(C) If the summons is required to be published, the court, upon the request of the party applying for service by other means, must designate a newspaper of general circulation in the county in which publication is required.

(e) Proof of service.

(1) The person effecting service must file proof of service stating the date, place, and manner of service, including a copy of the summons. If service is made by a person other than by an attorney, sheriff, constable, United States Marshal, or by the sheriff's, constable's or marshal's deputy, the proof of service must be by affidavit or unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act.

(2) Proof of service in a foreign country must be made as prescribed in these rules for service within this state, or by the law of the foreign country, or by order of the court.

(3) When service is made pursuant to paragraph(d)(4)(C), proof of service must include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(4) Failure to file proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

Tab 4

Rule 4. Process.

There was a request indicating that the requirements for a person serving process found in Utah Code §78B-8-302(7) are not found in the process outlined by URCP Rule 4. Specifically, the statute requires the following:

- (a) legibly document the date and time of service on the front page of the document being served;
- (b) legibly print the process server's name, address, and telephone number on the return of service;
- (c) sign the return of service in substantial compliance with Title 78B, Chapter 18a, Uniform Unsworn Declarations Act;
- (d) if the process server is a peace officer, sheriff, or deputy sheriff, legibly print the badge number of the process server on the return of service; and
- (e) if the process server is a private investigator, legibly print the private investigator's identification number on the return of service.

And Rule 4(e) requires the following:

- (1) The person effecting service must file proof of service stating the date, place, and manner of service, including a copy of the summons. If service is made by a person other than by an attorney, sheriff, constable, United States Marshal, or by the sheriff's, constable's or marshal's deputy, the proof of service must be by affidavit or unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act.
- (2) Proof of service in a foreign country must be made as prescribed in these rules for service within this state, or by the law of the foreign country, or by order of the court.
- (3) When service is made pursuant to paragraph(d)(4)(C), proof of service must include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.
- (4) Failure to file proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

1 **Rule 4. Process.**

2 **(a) Signing of summons.** The summons must be signed and issued by the plaintiff or
3 the plaintiff's attorney. Separate summonses may be signed and issued.

4 **(b) Time of service.** Unless the summons and complaint are accepted, a copy of the
5 summons and complaint in an action commenced under Rule [3\(a\)\(1\)](#) must be served no
6 later than 120 days after the complaint is filed, unless the court orders a different period
7 under Rule 6. If the summons and complaint are not timely served, the action against
8 the unserved defendant may be dismissed without prejudice on motion of any party or
9 on the court's own initiative.

10 **(c) Contents of summons.**

11 (1) The summons must:

12 (A) contain the name and address of the court, the names of the parties to the
13 action, and the county in which it is brought;

14 (B) be directed to the defendant;

15 (C) state the name, address and telephone number of the plaintiff's attorney, if
16 any, and otherwise the plaintiff's address and telephone number;

17 (D) state the time within which the defendant is required to answer the
18 complaint in writing;

19 (E) notify the defendant that in case of failure to answer in writing, judgment by
20 default may be entered against the defendant;

21 (F) state either that the complaint is on file with the court or that the complaint
22 will be filed with the court within 10 days after service; and

23 (G) include the bilingual notice set forth in the form summons approved by the
24 Utah Judicial Council.

25 (2) If the action is commenced under Rule [3\(a\)\(2\)](#), the summons must also:

26 (A) state that the defendant need not answer if the complaint is not filed within
27 10 days after service; and

28 (B) state the telephone number of the clerk of the court where the defendant may
29 call at least 14 days after service to determine if the complaint has been filed.

30 (3) If service is by publication, the summons must also briefly state the subject
31 matter and the sum of money or other relief demanded, and that the complaint is on
32 file with the court.

33 **(d) Methods of service.** The summons and complaint may be served in any state or
34 judicial district of the United States. Unless service is accepted, service of the summons
35 and complaint must be by one of the following methods:

36 **(1) Personal service.** The summons and complaint may be served by any person 18
37 years of age or older at the time of service and not a party to the action or a party's
38 attorney. If the person to be served refuses to accept a copy of the summons and
39 complaint, service is sufficient if the person serving them states the name of the
40 process and offers to deliver them. Personal service must be made as follows:

41 (A) Upon any individual other than one covered by paragraphs (d)(1)(B),
42 (d)(1)(C) or (d)(1)(D), by delivering a copy of the summons and complaint to the
43 individual personally, or by leaving them at the individual's dwelling house or
44 usual place of abode with a person of suitable age and discretion who resides
45 there, or by delivering them to an agent authorized by appointment or by law to
46 receive process;

47 (B) Upon a minor under 14 years old by delivering a copy of the summons and
48 complaint to a parent or guardian of the minor or, if none can be found within
49 the state, then to any person having the care and control of the minor, or with
50 whom the minor resides, or by whom the minor is employed;

51 (C) Upon an individual judicially declared to be incapacitated, of unsound mind,
52 or incapable of conducting the individual's own affairs, by delivering a copy of
53 the summons and complaint to the individual and to the guardian or conservator
54 of the individual if one has been appointed; the individual's legal representative
55 if one has been appointed, and, in the absence of a guardian, conservator, or legal
56 representative, to the person, if any, who has care, custody, or control of the
57 individual;

58 (D) Upon an individual incarcerated or committed at a facility operated by the
59 state or any of its political subdivisions, by delivering a copy of the summons
60 and complaint to the individual personally, to the person who has the care,
61 custody, or control of the individual, or to that person's designee or to the
62 guardian or conservator of the individual if one has been appointed. The person
63 to whom the summons and complaint are delivered must promptly deliver them
64 to the individual;

65 (E) Upon a corporation not otherwise provided for in this rule, a limited liability
66 company, a partnership, or an unincorporated association subject to suit under a
67 common name, by delivering a copy of the summons and complaint to an officer,

68 a managing or general agent, or other agent authorized by appointment or law to
69 receive process and by also mailing a copy of the summons and complaint to the
70 defendant, if the agent is one authorized by statute to receive process and the
71 statute so requires. If no officer or agent can be found within the state, and the
72 defendant has, or advertises or holds itself out as having, a place of business
73 within the state or elsewhere, or does business within this state or elsewhere,
74 then upon the person in charge of the place of business;

75 (F) Upon an incorporated city or town, by delivering a copy of the summons and
76 complaint as required by statute, or in the absence of a controlling statute, to the
77 recorder;

78 (G) Upon a county, by delivering a copy of the summons and complaint as
79 required by statute, or in the absence of a controlling statute, to the county clerk;

80 (H) Upon a school district or board of education, by delivering a copy of the
81 summons and complaint as required by statute, or in the absence of a controlling
82 statute, to the superintendent or administrator of the board;

83 (I) Upon an irrigation or drainage district, by delivering a copy of the summons
84 and complaint as required by statute, or in the absence of a controlling statute, to
85 the president or secretary of its board;

86 (J) Upon the state of Utah or its department or agency by delivering a copy of the
87 summons and complaint to the attorney general and any other person or agency
88 required by statute to be served; and

89 (K) Upon a public board, commission or body by delivering a copy of the
90 summons and complaint as required by statute, or in the absence of a controlling
91 statute, to any member of its governing board, or to its executive employee or
92 secretary.

93 **(2) Service by mail or commercial courier service.**

94 (A) The summons and complaint may be served upon an individual other than
95 one covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier
96 service in any state or judicial district of the United States provided the
97 defendant signs a document indicating receipt.

98 (B) The summons and complaint may be served upon an entity covered by
99 paragraphs (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in
100 any state or judicial district of the United States provided defendant's agent

101 authorized by appointment or by law to receive service of process signs a
102 document indicating receipt.

103 (C) Service by mail or commercial courier service shall be complete on the date
104 the receipt is signed as provided by this rule.

105 **(3) Acceptance of service.**

106 **(A) Duty to avoid expenses.** All parties have a duty to avoid unnecessary
107 expenses of serving the summons and complaint.

108 **(B) Acceptance of service by party.** Unless the person to be served is a minor
109 under 14 years old or an individual judicially declared to be incapacitated, of
110 unsound mind, or incapable of conducting the individual's own affairs, a party
111 may accept service of a summons and complaint by signing a document that
112 acknowledges receipt of the summons and complaint.

113 **(i) Content of proof of electronic acceptance.** If acceptance is obtained
114 electronically, the proof of acceptance must demonstrate on its face that the
115 electronic signature is attributable to the party accepting service and was
116 voluntarily executed by the party. The proof of acceptance must demonstrate
117 that the party received readable copies of the summons and complaint prior
118 to signing the acceptance of service.

119 **(ii) Duty to avoid deception.** A request to accept service must not be
120 deceptive, including stating or implying that the request to accept service
121 originates with a public servant, peace officer, court, or official government
122 agency. A violation of this paragraph may nullify the acceptance of service
123 and could subject the person to criminal penalties under applicable Utah law.

124 **(C) Acceptance of service by attorney for party.** An attorney may accept service
125 of a summons and complaint on behalf of the attorney's client by signing a
126 document that acknowledges receipt of the summons and complaint.

127 **(D) Effect of acceptance, proof of acceptance.** A person who accepts service of
128 the summons and complaint retains all defenses and objections, except for
129 adequacy of service. Service is effective on the date of the acceptance. Filing the
130 acceptance of service with the court constitutes proof of service under Rule 4(e).

131 **(4) Service in a foreign country.** Service in a foreign country must be made as
132 follows:

133 (A) by any internationally agreed means reasonably calculated to give notice,
134 such as those means authorized by the Hague Convention on the Service Abroad
135 of Judicial and Extrajudicial Documents;

136 (B) if there is no internationally agreed means of service or the applicable
137 international agreement allows other means of service, provided that service is
138 reasonably calculated to give notice:

139 (i) in the manner prescribed by the law of the foreign country for service in
140 that country in an action in any of its courts of general jurisdiction;

141 (ii) as directed by the foreign authority in response to a letter of request
142 issued by the court; or

143 (iii) unless prohibited by the law of the foreign country, by delivering a copy
144 of the summons and complaint to the individual personally or by any form of
145 mail requiring a signed receipt, addressed and dispatched by the clerk of the
146 court to the party to be served; or

147 (C) by other means not prohibited by international agreement as may be directed
148 by the court.

149 **(5) Other service.**

150 (A) If the identity or whereabouts of the person to be served are unknown and
151 cannot be ascertained through reasonable diligence, if service upon all of the
152 individual parties is impracticable under the circumstances, or if there is good
153 cause to believe that the person to be served is avoiding service, the party
154 seeking service may file a motion to allow service by some other means. An
155 affidavit or declaration supporting the motion must set forth the efforts made to
156 identify, locate, and serve the party, or the circumstances that make it
157 impracticable to serve all of the individual parties.

158 (B) If the motion is granted, the court will order service of the complaint and
159 summons by means reasonably calculated, under all the circumstances, to
160 apprise the named parties of the action. The court's order must specify the
161 content of the process to be served and the event upon which service is complete.
162 Unless service is by publication, a copy of the court's order must be served with
163 the process specified by the court.

164 (C) If the summons is required to be published, the court, upon the request of the
165 party applying for service by other means, must designate a newspaper of
166 general circulation in the county in which publication is required.

167 **(e) Proof of service.**

168 (1) The person effecting service must file proof of service stating the date, place, and
169 manner of service, including a copy of the summons. If service is made by a person
170 other than by an attorney, sheriff, constable, United States Marshal, or by the
171 sheriff's, constable's or marshal's deputy, the proof of service must be by affidavit or
172 unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn
173 Declarations Act.

174 (2) Proof of service in a foreign country must be made as prescribed in these rules
175 for service within this state, or by the law of the foreign country, or by order of the
176 court.

177 (3) When service is made pursuant to paragraph(d)(4)(C), proof of service must
178 include a receipt signed by the addressee or other evidence of delivery to the
179 addressee satisfactory to the court.

180 (4) Failure to file proof of service does not affect the validity of the service. The court
181 may allow proof of service to be amended.

182

183 *Effective: Nov. 1, 2023*

184

Effective 5/3/2023

78B-8-302 Process servers.

- (1) A complaint, a summons, or a subpoena may be served by a person who is:
 - (a) 18 years old or older at the time of service; and
 - (b) not a party to the action or a party's attorney.
- (2) Except as provided in Subsection (5), the following may serve all process issued by the courts of this state:
 - (a) a peace officer employed by a political subdivision of the state acting within the scope and jurisdiction of the peace officer's employment;
 - (b) a sheriff or appointed deputy sheriff employed by a county of the state;
 - (c) a constable, or the constable's deputy, serving in compliance with applicable law;
 - (d) an investigator employed by the state and authorized by law to serve civil process; and
 - (e) a private investigator licensed in accordance with Title 53, Chapter 9, Private Investigator Regulation Act.
- (3) A private investigator licensed in accordance with Title 53, Chapter 9, Private Investigator Regulation Act, may not make an arrest pursuant to a bench warrant.
- (4) While serving process, a private investigator shall:
 - (a) have on the investigator's person a visible form of credentials and identification identifying:
 - (i) the investigator's name;
 - (ii) that the investigator is a licensed private investigator; and
 - (iii) the name and address of the agency employing the investigator or, if the investigator is self-employed, the address of the investigator's place of business;
 - (b) verbally communicate to the person being served that the investigator is acting as a process server; and
 - (c) print on the first page of each document served:
 - (i) the investigator's name and identification number as a private investigator; and
 - (ii) the address and phone number for the investigator's place of business.
- (5) Any service under this section when the use of force is authorized on the face of the document, or when a breach of the peace is imminent or likely under the totality of the circumstances, may only be served by:
 - (a) a law enforcement officer, as defined in Section 53-13-103; or
 - (b) a special function officer, as defined in Section 53-13-105, who is:
 - (i) employed as an appointed deputy sheriff by a county of the state; or
 - (ii) a constable.
- (6) The following may not serve process issued by a court:
 - (a) a person convicted of a felony violation of an offense listed in Subsection 77-41-102(18); or
 - (b) a person who is a respondent in a proceeding described in Title 78B, Chapter 7, Protective Orders and Stalking Injunctions, in which a court has granted the petitioner a protective order.
- (7) A person serving process shall:
 - (a) legibly document the date and time of service on the front page of the document being served;
 - (b) legibly print the process server's name, address, and telephone number on the return of service;
 - (c) sign the return of service in substantial compliance with Title 78B, Chapter 18a, Uniform Unsworn Declarations Act;
 - (d) if the process server is a peace officer, sheriff, or deputy sheriff, legibly print the badge number of the process server on the return of service; and

(e) if the process server is a private investigator, legibly print the private investigator's identification number on the return of service.

Amended by Chapter 49, 2023 General Session
Amended by Chapter 123, 2023 General Session

Tab 5

Rules 1 and 81

New rules for Business and Chancery Court

With the drafting and presentation of rules for the Business and Chancery Court the Supreme Court noticed the rules regarding the scope of the URCP may need to be amended to reflect the creation of these separate procedural rules. Both rules are included in these materials, but the substantive change has been made to Rule 81. Specifically, a paragraph has been added to state:

“(d) Application to business and chancery court. These rules apply in the business and chancery court except where there is a rule of the same number in the Utah Rules of Business and Chancery Procedure, or the Utah Rules of Business and Chancery Procedure exclude application of these rules by specific rule number.”

1 **Rule 1. General provisions.**

2 *Effective: 11/1/2011*

3 **Scope of rules.** These rules govern the procedure in the courts of the state of Utah in all
4 actions of a civil nature, whether cognizable at law or in equity, and in all statutory
5 proceedings, except as governed by other rules promulgated by this court or statutes
6 enacted by the Legislature, and except as stated in Rule [81](#). They ~~shall~~ must be liberally
7 construed and applied to achieve the just, speedy, and inexpensive determination of
8 every action. These rules govern all actions brought after they take effect and all further
9 proceedings in actions then pending. If, in the opinion of the court, applying a rule in an
10 action pending when the rule takes effect would not be feasible or would be unjust, the
11 former procedure applies.

12

13 **Advisory Committee Notes**

14 These rules apply to court commissioners to the same extent as to judges.

15 A primary purpose of the 2011 amendments is to give effect to the long-standing but
16 often overlooked directive in Rule 1 that the Rules of Civil Procedure should be
17 construed and applied to achieve "the just, speedy and inexpensive determination of
18 every action." The amendments serve this purpose by limiting parties to discovery that
19 is proportional to the stakes of the litigation, curbing excessive expert discovery, and
20 requiring the early disclosure of documents, witnesses and evidence that a party
21 intends to offer in its case-in-chief. The committee's purpose is to restore balance to the
22 goals of Rule 1, so that a just resolution is not achieved at the expense of speedy and
23 inexpensive resolutions, and greater access to the justice system can be afforded to all
24 members of society.

25 Due to the significant changes in the discovery rules, the Supreme Court order adopting
26 the 2011 amendments makes them effective only as to cases filed on or after the effective

27 date, November 1, 2011, unless otherwise agreed to by the parties or ordered by the
28 court.
29

1 **Rule 81. Applicability of rules in general.**

2 *Effective:*

3 (a) Special statutory proceedings. These rules ~~shall~~ apply to all special statutory
4 proceedings, except insofar as such rules are by their nature clearly inapplicable. Where
5 a statute provides for procedure by reference to any part of the former Code of Civil
6 Procedure, such procedure ~~shall~~ must be in accordance with these rules.

7 (b) Probate and guardianship. These rules ~~shall~~ do not apply to proceedings in
8 uncontested probate and guardianship matters, but ~~shall~~ apply to all proceedings
9 subsequent to the joinder of issue therein, including the enforcement of any judgment
10 or order entered.

11 (c) Application to small claims. These rules ~~shall~~ do not apply to small claims
12 proceedings except as expressly incorporated in the Small Claims Rules.

13 (d) Application to business and chancery court. These rules apply in the business and
14 chancery court except where there is a rule of the same number in the Utah Rules of
15 Business and Chancery Procedure, or the Utah Rules of Business and Chancery
16 Procedure exclude application of these rules by specific rule number.

17 ~~(e)~~ On appeal from or review of a ruling or order of an administrative board or
18 agency. These rules ~~shall~~ apply to the practice and procedure in appealing from or
19 obtaining a review of any order, ruling or other action of an administrative board or
20 agency, except insofar as the specific statutory procedure in connection with any such
21 appeal or review is in conflict or inconsistent with these rules.

22 ~~(f)~~ Application in criminal proceedings. These rules of procedure ~~shall~~ also govern in
23 any aspect of criminal proceedings where there is no other applicable statute or rule,
24 provided, that any rule so applied does not conflict with any statutory or constitutional
25 requirement.

26

Tab 6

**JOINT RESOLUTION AMENDING RULES OF CIVIL
PROCEDURE ON CHANGE OF JUDGE AS A MATTER OF RIGHT**

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Gricius

Senate Sponsor: Keith Grover

LONG TITLE

General Description:

This joint resolution amends Rule 63A of the Utah Rules of Civil Procedure regarding the change of judge as a matter of right.

Highlighted Provisions:

This resolution:

- ▶ amends Rule 63A of the Utah Rules of Civil Procedure to allow for a change of judge by a party in a civil action; and
- ▶ makes technical and conforming changes.

Special Clauses:

This resolution provides a special effective date.

Utah Rules of Evidence Affected:

AMENDS:

Rule 63A, Utah Code of Evidence Procedure, as Utah Rules of Civil Procedure

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend rules of procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of all members of both houses of the Legislature:

Section 1. **Rule 63A** Utah Rules of Civil Procedure is amended to read:

Rule 63A. Change of judge as a matter of right.

(a) Change of judge by one side of an action.

(a) (1) Right to change a judge by one side of an action.

(a) (1) (A) In a civil action pending in a court in a county with seven or more district

33 court judges, each side is entitled to one change of judge as a matter of right under this
34 paragraph (a).

35 (a) (1) (B) Even if two or more parties on one side of a civil action have adverse or
36 hostile interests, the action, whether single or consolidated, must be treated as only having two
37 sides for purposes of a changing judge under this paragraph (a).

38 (a) (1) (C) A side is not entitled to more than one change of judge under this paragraph
39 (a).

40 (a) (1) (D) Regardless of when a party joins a civil action, a party is not entitled to a
41 change of judge as a matter of right under this paragraph (a) if the notice of a change of judge
42 is untimely under paragraph (a)(2).

43 **(a) (2) Notice of a change of judge.**

44 (a) (2) (A) A party seeking a change of judge under this paragraph (a) must file a notice
45 of a change of judge with the clerk of the court.

46 (a) (2) (B) If the notice of a change of judge is timely under this paragraph (a)(2), the
47 notice must be granted.

48 (a) (2) (C) In filing a notice of a change of judge under this paragraph (a), a party is not
49 required to state any reason for seeking a change of judge, but the party must attest in good
50 faith that the notice is not being filed:

51 (a) (2) (C) (i) for the purpose to delay any action or proceeding; or

52 (a) (2) (C) (ii) to change the judge on the grounds of race, gender, or religious
53 affiliation.

54 (a) (2) (D) The notice must be filed:

55 (a) (2) (D) (i) on the side of a plaintiff or petitioner, within seven days after the day on
56 which a judge is first assigned to the action or proceeding; or

57 (a) (2) (D) (ii) on the side of a defendant or respondent, within seven days after the day
58 on which the defendant or respondent is served the complaint or petition, or at the time of the
59 first filing by the defendant or respondent with the court, whichever occurs first.

60 (a) (2) (E) Failure to file a timely notice of a change of judge under this rule precludes
61 a change of judge under this paragraph (a).

62 **(a) (3) Assignment of action.**

63 (a) (3) (A) Upon the filing of a notice under this paragraph (a), the judge assigned to

64 the action must take no further action in the case.

65 (a) (3) (B) The action must be promptly reassigned to another judge within the county.

66 (a) (3) (C) If the action is unable to be reassigned to another judge within the county,

67 the action may be transferred to a court in another county in accordance with Rule 42.

68 (a) (4) Exceptions. A party, or a side, is not entitled to change a judge as a matter of
69 right under this paragraph (a):

70 (a) (4) (A) in any proceeding regarding a petition for post-conviction relief under Rule
71 65C;

72 (a) (4) (B) on a petition to modify child custody, child support, or alimony, unless the
73 judge assigned to the action is not the same judge assigned to any of the previous actions
74 between the parties;

75 (a) (4) (C) in an action before the juvenile court or the Business and Chancery Court;

76 (a) (4) (D) in an action in which the judge is sitting as a water or tax judge;

77 (a) (4) (E) in an action on remand from an appellate court; or

78 (a) (4) (F) if an action is unable to be transferred under paragraph (a)(3)(C) to another
79 county in accordance with Rule 42.

80 ~~[(a) Notice of change.]~~ **(b) Right to change a judge by agreement of the parties.**

81 **(b) (1) Notice of a change of judge.**

82 (b) (1) (A) Except in actions with only one party, all parties joined in the action may,
83 by unanimous agreement and without cause, change the judge assigned to the action by filing a
84 notice of change of judge.

85 (b) (1) (B) The parties shall send a copy of the notice to the assigned judge and the
86 presiding judge.

87 (b) (1) (C) The notice shall be signed by all parties and shall state: (1) the name of the
88 assigned judge; (2) the date on which the action was commenced; (3) that all parties joined in
89 the action have agreed to the change; (4) that no other persons are expected to be named as
90 parties; and (5) that a good faith effort has been made to serve all parties named in the
91 pleadings.

92 (b) (1) (D) The notice shall not specify any reason for the change of judge.

93 (b) (1) (E) Under no circumstances shall more than one change of judge be allowed
94 under this ~~rule~~ paragraph (b) in an action.

95 **(b) (2) Time for filing a notice.**

96 (b) (2) (A) Unless extended by the court upon a showing of good cause, the notice
97 must be filed within 90 days after commencement of the action or prior to the notice of trial
98 setting, whichever occurs first.

99 (b) (2) (B) Failure to file a timely notice precludes any change of judge under this
100 ~~[rule]~~ paragraph (b).

101 ~~[(c)]~~ **(b) (3) Assignment of action.**

102 (b) (3) (A) Upon the filing of a notice of change, the assigned judge shall take no
103 further action in the case.

104 (b) (3) (B) The presiding judge shall promptly determine whether the notice is proper
105 and, if so, shall reassign the action.

106 (b) (3) (C) If the presiding judge is also the assigned judge, the clerk shall promptly
107 send the notice to the associate presiding judge, to another judge of the district, or to any judge
108 of a court of like jurisdiction, who shall determine whether the notice is proper and, if so, shall
109 reassign the action.

110 ~~[(d)]~~ **(b) (4) Nondisclosure to court.** No party shall communicate to the court, or
111 cause another to communicate to the court, the fact of any party's seeking consent to a notice of
112 change.

113 ~~[(e)]~~ **(c) Rule 63 unaffected.** ~~[This rule does not affect any rights under Rule 63.]~~

114 Nothing in this rule precludes the right of any party to seek disqualification of a judge under
115 Rule 63.

116 Section 2. **Effective date.**

117 (1) In accordance with Utah Constitution, Article VIII, Section 4, the amendments in
118 this resolution pass upon approval by a two-thirds vote of all members elected to each house.

119 (2) After passage of this resolution under Subsection (1), the amendments in this
120 resolution take effect on January 1, 2025.